

## **REMARKS**

Reconsideration of the subject application in view of the foregoing amendment is respectfully requested.

By the present amendment, the specification has been amended to insert a missing reference sign. Claim 1 has been amended to more clearly define the present invention and to eliminate an alleged indefiniteness therein.

Based on the foregoing amendments and the following remarks, the application is deemed to be in condition for allowance and action to that end is respectfully requested.

### **I. Rejection Under 35 U.S.C. § 112**

The Examiner rejected claims 1-9 under 35 U.S.C. § 112, second paragraph, as being indefinite, pointing out specific recitations in claim 1 rendering claim 1 and claims 2 and 4-9, dependent thereon, indefinite. Specifically, the Examiner points out that “support regions” have no antecedent in the claims, that it is not understood what are the support regions, and how the release direction is determined.

As noted above, claim 1 has been amended to eliminate the indefiniteness therein. Specifically, “support regions” have been positively recited in the claim.

Generally, support regions are discussed in the specification (the paragraph, bridging pages 11-12).

The release direction (E) is the direction, as pointed in the specification (please see the paragraph mentioned above), in which the adjusting device is removed from the housing (4), i.e., all of the support regions face in the same direction.

## **II. Rejection Over the Prior Art**

The Examiner rejected Claims 1, 2 and 4-6 under 35 U.S.C. §103(a) as being unpatentable over Gerritsen, U.S. Patent No. 5,421,091 (Gerritsen) in view of Morehouse, U.S. Patent No. 1,753,441 (Morehouse). Claims 7-8 were rejected respectively under 35 U.S.C. §103(a) as being unpatentable as claims 1-6 above and further in view of Osada, U.S. Patent No. 6,523,267 (Osada) and Smolinski, U.S. Patent No. 5,992,540 (Smolinski). Claim 9 was rejected as claims 1-6 above and further in view of Stowell, U.S. Patent No. RE 37,190 (Stowell). It is respectfully submitted that claims 1, 2 and 4-9 are patentable over the cited references.

Specifically, claim 1 recites an adjusting device (30) mountable on the housing connecting means (16) for securing the connection means (21) to the housing, and a rectilinear spring member (36) for biasing the adjusting device (30) to its locking position and extending substantially parallel to a longitudinal direction of the housing neck (8). Claim 1 also recites that all of the support regions of the adjusting device on the housing and the housing have a common release direction (E). Thereby, as discussed in the specification (page 5, third paragraph) at least a section of the housing, on which the adjusting device is supported can be formed by a die casting process.

It is respectfully submitted that the saber saw recited in Claim 1 is not disclosed or suggested in the prior art including all of the prior art of record in this application. Considering the prior art, Gerritsen does not disclose a rectilinear spring member for biasing the adjusting device, as it is recognized in the Office Action. Nor does Gerritsen disclose that all of the support regions of the adjusting device on the housing and the housing have a common release direction.

As it has already been discussed previously, in Gerritsen, the locking plunger (45) is displaceable transverse to a longitudinal extent of the guide rail, i.e., transverse to the longitudinal extent of the saw housing.

The plunger (45) is located between two, extending transversely to each other, housing parts (12, 14) with two release directions at least one of which would be different from the release direction of the support regions of the plunger (45). It is noted that the plunger (45) is also supported (by a spring (52)) against a top surface of the aperture (22a) which faces in a direction transverse to the direction of removal of plunger 45.

In view of the above, it is respectfully submitted that Gerritsen does not anticipate or makes obvious the present invention, as defined by claim 1, and claim 1 is patentable over Gerritsen.

No the present invention, as defined by claim 1, would be obvious over Gerritsen in view of Morehouse, assuming *arguendo*, that Gerritsen and Morehouse are combined. Morehouse does not disclose a rectilinear spring member. In Morehouse, the spring member (29) is curved.

Anyway, Morehouse is not a pertinent reference, it does not belong to the field of applicant's endeavor, nor is even remotely pertinent to the particular problem with which applicant is concerned.

The Official Notice of the equivalency of a coil spring and springy bar has been noted. However, the Office Action contains no evidence that the fact asserted

to be well-known is indeed well known and is capable of being demonstrated instantly and unquestionably, as required by *Ahlert*, 165 USPQ 418, 420 (CCPA1970). The case law holds that

It is never appropriate to rely solely on “common knowledge” in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 59 USPQ2d at 1697 (Fed. Cir. 2001).

No such evidentiary support is found in the Office Action.

The Court of Appeals for Federal Circuit further held that “common knowledge” of one skilled in the art is not a substitute for specific evidence. *In re Lee*, 61 U.S.P.Q. 2d 1430 (Fed. Cir. 2002).

In view of the above, it is respectfully submitted that the present invention, as defined by claim 1, is patentable over the prior art, and claim 1 is allowable.

Claims 2 and 4-9 depend on claim 1 and are allowable for the same reasons claim 1 is allowable.

## CONCLUSION

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance, and allowance of the application is respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place the case in condition for final allowance, it is respectfully requested that such amendment or correction be carried out by Examiner's Amendment and the case passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

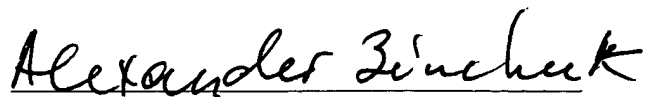


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